

# Constitutional Protection of Property and Economic Rights†

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*This paper is an edited version of an address delivered by the author on December 14, 1991 at a conference on "Prosperity and the Rule of Law" in the Washington, D.C. area. Professor Siegan advocates that the new constitutions of the former communist nations and republics should establish political systems consistent with the general objective of their revolutions: to minimize the rule of the state and maximize the liberty of the people. These constitutions can best provide for freedom and abundance by substantially limiting the power of government.*

In recent years, our world has experienced an extraordinary historical event that few, if any, had ever forecast: almost simultaneously, millions of people in many countries shed despotism in favor of freedom. They demolished a system which smothered their humanity and their opportunity for progress and betterment. In the entire history of freedom, there never has been so great an advance within so brief a period.

What a horrible tragedy it would be if governments were now established that would return these people to the oppressions from which they escaped. I do not speak idly for I have observed and listened to American advisors who counsel the adoption of constitutions and laws that might bring about such a terrible result. It should by now be clear that these revolutions were against an evil system and not evil rulers. They were intended to minimize the rule of the state and maximize the freedom of the people. Those who now advocate establishing strong government controls in these nations do not comprehend the meaning of what has occurred.

Government should be powerful enough to protect the people

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against their foreign and local enemies and domestic perils and excesses. It must never be powerful enough to oppress the people or inhibit their wisdom and creativity. In the words of the United States Supreme Court:

To sustain the individual freedom of action contemplated by the [United States] Constitution, is not to strike down the common good but to exalt it; for surely the good of society as a whole cannot be better served than by the preservation against arbitrary restraint of the liberties of its constituent members.<sup>1</sup>

Principles of freedom should guide the liberated nations and republics in framing their constitutions. A constitution is the most important legal document for a nation that subscribes to the rule of law. The drafting of a constitution serves not only to frame a legal document but more important to create a system of government. In its constitution, a nation defines the relationship between the people and their government. In rejecting tyranny, the people of Eastern Europe have salvaged and preserved the rights to which they are entitled as human beings. They should now constitutionally enshrine these rights forever.<sup>2</sup>

This paper primarily considers constitutional provisions that are required to establish and maintain a free, viable, and abundant economy, provisions relating to property and economic matters. This discussion will also consider other constitutional provisions that are necessary to create an environment favorable to ownership and investment.

A nation cannot exist if it does not exist economically. To prosper, a nation committed to a market economy must encourage ownership and investment. A constitution that protects liberties will not only promote investment by the nation's residents but will also draw international investment. Investors avoid nations that confiscate property, are economically irresponsible, and repress people. In the competition for international investment, nations that strongly secure life, liberty, and property are far ahead in attracting industry and trade.

#### PROVISIONS GENERALLY SECURING ECONOMIC LIBERTIES

In addition to specific protections guaranteeing property and economic interests, a constitution should contain other constitutional provisions that are also essential to secure economic liberties.

First, separation of powers. The constitution should separate and limit the powers of the legislative, executive, and judicial parts of

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1. *Adkins v. Children's Hospital*, 261 U.S. 525, 561 (1923).

2. See generally BERNARD H. SIEGAN, *DRAFTING A CONSTITUTION FOR A NATION OR REPUBLIC EMERGING INTO FREEDOM* (1992).

government. In addition to functioning separately, each of the three branches of government should have the power to check and balance the others. The objective of the separation of powers is two-fold; first, to diffuse and disperse authority, to make it very difficult for any group to obtain great power over the government, and second, to ensure greater and diverse consideration of proposed laws. If governmental powers are divided so that a particular policy can be implemented only by a combination of legislative *enactment*, executive *implementation*, and judicial *interpretation*, no group of persons will be able to impose its will. It is also likely that measures surviving this process will serve the nation better than those that do not.

Thus, under the United States Constitution, a measure passed by Congress can be vetoed by the President or annulled as unconstitutional by the Supreme Court. The framers of our Constitution believed that when unlimited power is lodged in either a king or a parliament regardless of how well intentioned either may be, there is considerable risk that it will be exercised tyrannically. The rights of life, liberty, and property are too precious to be left entirely to the wisdom or mercy of the legislature.

Second, the constitution should establish a judicial branch with the power to secure constitutional terms and provisions. The people of every country are supreme in their sovereignty except they must defer to individuals exercising their natural and fundamental liberties. The protection of liberty requires an independent judiciary powerful enough to monitor the legislative and executive branches to assure compliance with the constitution. When interpreting the constitution, the judiciary should have only the power to invalidate laws, not the power to impose them.

Third, the constitution should protect the liberties of the people from oppressive, arbitrary, confiscatory, and capricious laws and regulations. The document should enumerate freedoms of the people thought especially worthy of protection. Because a constitution is a result of a political process and usually remains in force for a long period of time, it is almost inevitable that not all liberties will be listed. Moreover, definitions are not always precise and might change over time. To avoid these problems, the judiciary should have the power to secure both enumerated and unenumerated liberties. However, as will be explained more fully later in this paper, the judicial role must be limited to protecting people from oppression. Government should have no constitutional obligation to support, advance, or otherwise subsidize people.

Fourth, because liberties are not absolute, the constitution should provide a formula that the judiciary must apply in determining when government legislation or regulation violates individual or corporate liberties. A law that restrains freedom would be needless or harmful or both if it will not achieve its intended public purpose or is excessive in its impact. Thus, to uphold restraints it imposes upon human freedom, the government should have the burden of persuading a court: first, that the objective of the law or regulation is within the power of the government body that adopted it; second, that the restraint in question is also within the power of the government body that adopted it and will substantially achieve its objective; third, that the consequences of the restraint are not out of proportion to its benefits; and fourth, that the same objective cannot be achieved by a law less harmful to liberty.

These rules, borrowed from courts in the United States and other western nations, make certain that the people are not arbitrarily or capriciously deprived of their rights to life, liberty, and property. I shall explain their application more fully later in this paper.

## THE SUCCESS OF FREE ECONOMIC SYSTEMS

Thus far, I have discussed constitutional principles that are not very controversial among American constitutional scholars. The same is not true for what follows since I am going to discuss with you more specifically the protection of property and economic liberties, and many in the constitutional community distinguish and maintain a dichotomy between intellectual-political rights on the one side and material rights on the other. These scholars generally reject government restraints on intellectual and political activities yet accept quite willingly (sometimes even eagerly) much stronger restraints on economic activities.

However, this dichotomy is not suited to a free state. Government is not more wise or humane when it regulates economics than when it regulates speech, press, or religion. In barring economic freedoms, the communist dictatorships denied people both their human rights and the material abundance that results when individuals exercise freely their talents and abilities.

The tendency of some constitutional scholars to prefer regulation of the economy is remarkable. On an intellectual level, the superiority of freedom over authority in the economic market has clearly won the lengthy debate. The best evidence of this is the millions of people who renounced the communist systems in large part for economic reasons. In recent years, five Nobel prizes in economics were awarded economists who maintain that securing economic liberties is

essential to the economic viability of the modern state. These scholars are Fredrich Hayek, Milton Friedman, George Stigler, James Buchanan, and Ronald Coase.

The difference in material outcome between free and command systems is readily apparent to any observer. Measured by living standards and total output, the economic systems of East Germany, China, and North Korea were disasters compared to those of West Germany, Taiwan, and South Korea. The results are little different when similar comparisons are made everywhere else in the world. Rejection of economic regression and stagnation was a major factor in the people's repudiation of communism.

Studies show the vast differences in outcome between economic systems. Thus, Professor Gerald Scully measured the success of open and closed societies and concluded that nations that have chosen to suppress economic, political, and civil liberties have gravely reduced the standard of living of their citizens. By contrast material progress is greatest if individuals have the right to pursue their affairs unmolested by the state. According to Scully's studies, politically open societies, which bind themselves to the rule of law, to private property, and to the private allocation of resources grew at three times more (2.73 to 0.91 percent annually) and were two and one half times as efficient as societies where those freedoms are circumscribed or prescribed.<sup>3</sup>

#### ECONOMIC REGULATION REDUCES BENEFITS OF THE ECONOMIC MARKETPLACE

Moreover, the more freedom in the marketplace the more likely it will better provide for the people. Contemporary economic studies show that in the United States, government regulation of economic markets very often operates negatively, its disadvantages outweigh its advantages. The legal restraints on economic activity do more harm than good.

In my book, *Economic Liberties and the Constitution*,<sup>4</sup> I have summarized fifty-three studies of government regulation, by more than sixty individual and institutional researchers, which have appeared in the most prestigious scholarly literature. These studies show that although every regulation accomplishes some purpose, the

3. Gerald W. Scully, *The Institutional Framework and Economic Development*, 96-3 J. POL. ECON. 661 (1988).

4. BERNARD H. SIEGAN, *ECONOMIC LIBERTIES AND THE CONSTITUTION* (1980).

great majority fail a cost/benefit analysis. The vast bulk of these scholars favor either total or substantial deregulation of the area under study.

As revealed in these studies, much regulation has resulted in the reduction of economic efficiency, misallocation of resources, and redistribution of income from the consumer to the regulated group. Considered as a whole, regulation seriously limits the nation's productivity and output. A common finding in these studies is that the regulation under study raises prices, first, by restricting the market from competition, and second, by imposing a variety of unnecessary requirements on producers and sellers that increase cost. People of average and lesser income, those least able to afford higher prices, are the most adversely affected.

Consider in this regard the comments of Professor Ronald Coase, 1991 Nobel prize winner in economics, who was for a long time the editor of the very highly respected *Journal of Law & Economics*. The Journal published numerous studies on economic regulation over the years, and Coase concludes:

The main lesson to be drawn from these studies is clear: they all tend to suggest that the regulation is either ineffective or that, when it has a noticeable impact, on balance the effect is bad, so that consumers obtain a worse product or a higher-priced product or both as a result of the regulation. Indeed, this result is found so uniformly as to create a puzzle: one would expect to find, in all these studies, at least some government programs that do more good than harm.<sup>5</sup>

The experience of government regulation in the United States reveals the great difficulty of maintaining economic freedoms in democratic societies. Economic regulation emanates chiefly from two different sources. The first source is those people who demand the passage of laws to remedy what they see as problems in the economic system. They are motivated by ideological or more general public interest reasons. Members of this group do not directly benefit from the laws they propose or favor.

The second source of economic regulation is those individuals and corporations who seek regulation in their own self-interest. Most of the people in this group are in business, trades, or professions. They want regulations imposed to limit competition usually as a means of obtaining more income for themselves.

The second group accounts for a great deal of regulation — perhaps most of it. In a representative society, legislators are highly receptive to the demands of their constituents. As a result a relatively small number of persons seeking to obtain monetary gains have considerable opportunity to do so. Judge Richard Posner has suggested

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5. Ronald Coase, *Economists and Public Policy*, in *LARGE CORPORATIONS IN A CHANGING SOCIETY* 169, 184 (J. Fred Weston ed., 1974).

that the lawmaking process creates a market for legislation in which politicians "sell" legislative protection to those who could help their electoral prospects with money or votes or both.<sup>6</sup>

Professor Michael Granfield has likened the legislature to a general store whose inventory includes monopolies, preferences, and concessions. The politician sells these goods, as any astute store owner would, to the group offering the highest price. The arrangement does not necessarily include bribery or any other illegal activity. It may simply involve a legal contribution from a business group or a promise of votes or services from a "public interest" group.<sup>7</sup>

The process that leads to legislation benefitting comparatively few people is not difficult to understand. Those who would be helped monetarily by statute have the incentive to wage a strong lobbying effort, whereas those who would bear the cost without sharing the benefits frequently do not have sufficient personal stake to fight for their position. The concentration of benefits provides a special interest group with an incentive for creating a narrow political lobby, whose small size makes organizing relatively easy.

On the other side, a larger number of citizens are involved; they are often widely dispersed and frequently have little or no knowledge of the proposed laws or the probable effects. Further, the costs of the legislation are spread so that few persons suffer very much, which limits incentive to organize. As a consequence, the costs of spending measures, subsidies, and special economic preferences are passed along, often to an unknowing and uncomplaining public.

In this environment, the well being of property owners and entrepreneurs can be precarious. Reform groups which reject or distrust market mechanisms, and business interests which seek to eliminate competition, have considerable opportunity to achieve their goals, particularly when they have common aims, as they often do.

The protection of owners and entrepreneurs from the power and might of these special economic interests demands both insertion of economic guarantees in a constitution and the existence of a judiciary with the power to enforce them.

One reason for the proliferation of regulations in the United States is that the United States Supreme Court has for a long time not protected commercial liberties. Earlier in this century, the Supreme Court protected these liberties, but subsequently interpreted

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6. RICHARD POSNER, *ECONOMIC ANALYSIS OF LAW* 405 (2d ed. 1977).

7. Michael Granfield, *Changing Industries and Economic Performance, in* LARGE CORPORATIONS IN A CHANGING SOCIETY, *supra* note 5, at 145, 164-65.

our Constitution as not authorizing this practice. However, the Court does secure the rights of property ownership.

### SECURING THE ECONOMIC MARKET

The United States experience should persuade the new nations and republics to draft constitutions that, unlike ours, will contain provisions clearly guaranteeing property and economic rights. Accordingly, let us now consider the content of constitutional provisions to protect a free economic market.

To begin with, a constitution protecting property and economic interests should limit government ownership. Excepting that which it presently owns or operates, government should not own or operate any commercial enterprise. Not only is a government not competent in this area, but it also has the incentive when it is so engaged to pass laws that will impede its private competitors.

The legislature should have no power to pass laws permitting the national or any local government to own land or buildings except those to be used solely for absolutely essential public services, such as streets, public schools, and police and fire stations. In the event the national or any local government seeks to purchase land or buildings for such purposes and the owner refuses to sell, a court should have power to enter an order conveying the property to the government but only upon its paying the owner full market value for the asset and full compensation for any other economic loss sustained by the owner as a consequence of the government's action. In my opinion, these objectives are fully consistent with the provision in the Fifth Amendment of the United States Constitution that "private property [shall not] be taken for public use, without just compensation."<sup>8</sup>

The constitution must otherwise secure property, economic, and contract interests.

First, property rights. Every person should have the right, individually or in combination with others, to purchase, rent, own, use, mortgage, sell, lease, transfer, bequeath, and inherit private property, or any part or portion thereof. Private property includes any asset or thing of value, whether tangible or intangible, real or personal.

Second, economic rights. Every person should have the right, individually or in combination with others, freely to practice the occupation, profession, or trade of his or her choice, freely to establish,

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8. The reader should be aware that the United States Supreme Court has not always accepted such an interpretation of the Takings Clause. *Compare* *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984) with *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886 (1992).



maintain, and operate a commercial enterprise, and freely to produce and distribute goods and services.

And third, contract rights. Every person should have the right, individually or in combination with others, to enter freely into binding agreements containing only provisions of their choice.

To be sure, some regulation that restricts economic activity is justified under a market economy. Few will reject regulation that truly secures public health and safety, prohibits noxious uses, and maintains law and order in real emergencies. Government regulation should be limited to forbidding private activity that actually violates the rights of others. The proper role for government is to protect the public from such harms, and not to prohibit or diminish individual production, wisdom, or creativity. The formula previously set forth to determine when regulation is constitutionally valid should be applied in the economic area with these objectives in mind.

As an example of how the said formula should be construed, consider the situation presented in the Minnesota plastic bottle case.<sup>9</sup> This case involved a 1977 Minnesota law prohibiting the retail sale of milk in plastic, non-returnable, non-refillable containers. The sale of milk in paperboard cartons was not affected. The plastic bottle manufacturers and retailers sued to declare the law unconstitutional on the basis that it denied them their liberties to produce and distribute plastic milk bottles, a legitimate item of commerce.

The first issue considered by the trial court in the case was whether the law promoted a public purpose. (The court found this to be a requirement to sustain a statute challenged as violating economic rights.) To recapitulate, economic regulations are imposed for one or both of the following reasons: first, to cause the economic system to function better — that is, to remedy or remove the excesses or limitations of the private market; second, to secure an economic advantage for a person, corporation or group by the elimination or reduction of competing businesses, occupations, products, or services.

If the court finds the second reason is controlling in a particular situation, then the law in question does not promote a public purpose. Not only does it deny liberty, it also reduces competition and production and increases costs, disadvantaging the vast majority and

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9. *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456 (1981). The United States Supreme Court sustained the Minnesota statute which was declared unconstitutional for the reasons explained in the text by both the trial and supreme court of the state.

benefiting only a small number. It takes from A and gives to B for the benefit of B. In the Minnesota bottle case, the state trial court found that the "actual basis [for the act] was to promote the economic interests of certain segments of the local dairy and pulpwood industries at the expense of the economic interests of other segments of the dairy industry and the plastics industry."<sup>10</sup> It accordingly held the law unconstitutional as contrary to the Due Process and Equal Protection Clauses; essentially that the Constitution prohibited the legislature from giving preferred treatment to any particular group.

However, suppose the court finds that the law seeks to increase competition and productivity, to eliminate waste, or to enhance the environment. These are legitimate and important governmental objectives and meet the first test. The next test is whether the law is likely to achieve these objectives — the means-ends test. Unlike the trial court, the Minnesota Supreme Court assumed that the purposes of the bottle law were legitimate — to enhance the environment, to conserve energy and resources, and so on — but found it would not achieve these purposes. Therefore, the restraint on liberty accomplished little other than harming the plastic milk bottle producers and distributors. The court held that "the evidence conclusively demonstrates that the discrimination against plastic nonrefillables is not rationally related to the act's objectives."<sup>11</sup>

#### CONSTITUTIONALLY LIMITING THE IMPOSITION OF TAXES

Let us now turn to consideration of public taxes. Like regulation, taxation can also strangle the economy. The amount of the tax burden is one factor an investor will consider in deciding whether or not to invest. Taxes add to the cost of production and cost of living. The greater the total taxes, the greater the negative impact on work, investment, and ownership. For example, if taxes lower the investor's net return by fifty percent, the deterrent impact will be much greater than at twenty percent.

If investment is reduced as a result of taxation or goes into the tax-free underground economy, the country's tax revenues will be lowered. By contrast, income tax revenues collected from the rich in the United States in the 1980s increased notwithstanding that income tax rates were reduced. In the 1980s, the Congress decreased rates and made other changes in tax laws reducing considerably individual tax liability. The tax revenue collected from the top 10% of earners rose from 150.6 billion in 1981 to 199.8 billion in 1988, an increase of 32.7% measured in constant dollars. For the top 5% of

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10. *Clover Leaf Creamery Company v. State of Minnesota, County of Ramsey District Court, Second Judicial District, No. 423258* (1978).

11. *Minnesota v. Clover Leaf Creamery Co.*, 289 N.W.2d 79, 82 (1979).

earners, the increase in tax revenues in this period was 44.1%. Total tax revenues for this period increased by 11.7% in constant dollars. Similarly, after the 1964 tax cut of about 20%, the revenues collected from the top 5% of earners rose from 17.17 billion in 1963 to 18.49 billion in 1965, an increase of 7.7% in constant dollars. Total tax revenues for this period slightly decreased by 0.3%.<sup>12</sup>

By reason of both tax reductions, the collections from the wealthy grew because they expanded their investment activities, offsetting the amounts they saved as a result of the tax rate reductions.

Taxes have an adverse impact on the incentive to invest and work, economic efficiency and aggregate output. Of course, they also increase the incentive to engage in tax avoidance activities, such as concocting tax shelters or entering and utilizing the underground economy.

Recognizing the impediments of taxation, a great many countries in recent years reduced considerably their maximum marginal tax rates on individuals. High tax rates remain an international problem. Mexico, for example, reduced its top income tax rate from sixty to thirty-five percent; yet economist David Goldman estimates that collected revenues in that country are only fifteen percent of what they would be if the government enacted lower rates and simplified the tax code.<sup>13</sup>

Spending to achieve the collective good is completely counter-productive when it results in taxation that limits significantly economic output — and thereby the collective good. Because the pressures for government spending are very great in democratic countries, constitutional controls over spending and taxes are essential. One American politician facetiously asserts that only women should be legislators because nature has endowed them with the will to say no. Seriously though, constitutional restraints on spending are required to control politicians' natural tendencies to please the voters.

Constitutions should not prescribe tax systems or programs. This is the responsibility of the elected branches of government. But a constitution must protect the people from confiscatory and arbitrary laws, regardless of the subject of these laws. Here then are suggestions for constitutional provisions concerning taxation and spending:

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12. JAMES D. GWARTNEY & RICHARD L. STROUP, MICROECONOMICS: PRIVATE AND PUBLIC CHOICE 117-21 (6th ed. 1992).

13. David Asman, *The Salinas Reforms Take Root*, WALL ST. J., Dec. 2, 1991, at A12.

1. The maximum amount of annual taxes on real property or on a commercial venture shall not exceed one percent of the full market value of such property or venture. (California's Constitution limits the maximum amount of *ad valorem* taxes on real property to one percent of its full cash value.)<sup>14</sup>

2. The total amount of tax revenues collected in any one year should not exceed a specified percentage of the gross domestic income of the nation for the prior year, except with the consent of two-thirds of the legislature.

3. The national government should not incur indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenues received for such year, except with the consent of two-thirds of the legislature.

4. When for any year, total revenues received by the government exceeds total outlays, the surplus should be used to reduce the amount levied for the subsequent year.

5. The president or chief executive officer of the nation should have the power to veto specific taxes or spending items either as part of a general or a specific veto power. This power is referred to as a line item veto. The legislature should be able to override such a veto with a two-thirds majority.

#### SECURING ONLY LIBERTIES AND NOT BENEFITS

Let me now turn to another aspect of constitutional economic protections: A constitution should secure only liberties and not entitlements. The United States Constitution has often been referred to as a bill of rights, and there are two reasons for this: First, the government has no authority to deprive persons of their liberties. Second, persons are guaranteed liberties to engage in activities of their choice.

These protections are intended to eliminate laws that restrict the exercise of human liberties. The U.S. Constitution does not impose affirmative economic obligations on the government or on the private sector. Unlike some constitutions, it does not provide entitlements to housing, education, medical service, or clean environment; it does not mandate adequate standards of living, or periods of rest and leisure.

Our Constitution does not prohibit Congress or the state legislatures from passing legislation to achieve these benefits. It simply does not require such enactments.

Liberty in the United States Constitutional sense means being secure from government oppression. To constitutionally secure social

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14. CAL. CONST. art. III A, § 1.

or economic benefits requires subordinating individual liberties to notions of the collective good, while under the United States Constitution the protection of individual liberty is the major goal.

A constitution that protects both liberties and entitlements is incoherent and very difficult to interpret since the judicial interpreter will not know at any one time whether to reduce or expand government authority. Moreover, guarantees of entitlements in a constitution that also provides for judicial review will impede the judiciary's protection of liberty. Enabling the judiciary to guarantee entitlements is a power dangerous to democracy. To enforce entitlements the judiciary might have to mandate imposition of taxation and spending, and neither the people nor the legislature would be able to control this power.<sup>15</sup>

The judiciary would be given dictatorial control over important spending decisions. Taxing and spending the receipts are peculiarly legislative powers, stemming from the idea that only the people, acting on their own or through their representatives, are entitled to decide how they will utilize their own funds. Similarly, a court may implement provisions in a constitution that require a clean environment, adequate medical service, or fair wages by imposing personal monetary requirements that reduce and limit the property or contract rights of owners and entrepreneurs.

The communist regimes attempted to provide so many entitlements that they had to subordinate or eliminate the fundamental rights of life, liberty, and property. A major concern was to satisfy and pay the government's generous entitlement obligations. Their rulers sought to regulate almost every human activity to achieve the common good; instead of producing a paradise, however, they created virtual prisons. These prisons did not necessarily confine physical bodies, but they did incarcerate the resourcefulness and inventiveness of the human mind.

The great lesson of our times is that the forces of production, conservation, and creativity rest principally in the intellectual and commercial marketplaces and not in government. Thus, it may be true that intellectuals and entrepreneurs act largely in their own self interest, but probably no more so than people in government, and the

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15. In a 5-4 decision, the United States Supreme Court held that a court order directing a local government body to levy its own taxes is a judicial act within the power of federal court. The dissent objected that any judicial taxation order is an exercise of a power that always has been thought legislative in nature. *Missouri v. Jenkins*, 495 U.S. 33 (1990). I agree with the dissent and would accordingly recommend that constitutional writers make certain that the judiciary is deprived of all authority to impose taxes.

incentives under which they operate are much more oriented to furthering the general public good.<sup>16</sup>

### CONCLUSION

The failure of the communist command economies demonstrate that government institutions cannot provide adequately for the economic needs and aspirations of the people. A market economy based on private ownership and investment is the only alternative to the command economy. For a market economy to succeed, a nation must protect and encourage private initiative and risk taking. Regulation must be limited and taxes must be low.

The liberated nations and republics face very difficult times. Broad constitutional guarantees for economic freedom would be a giant advance toward a new and better life.

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16. This view is consistent with the "public choice" perspective advanced by James M. Buchanan, Nobel Laureate in Economics for 1986. He emphasizes self-interest as the motivating factor in both private and political choice. However, the forces of the economics marketplace are more likely to channel individual self-interest into socially desirable outcomes. *See generally* JAMES BUCHANAN & GORDON TULLOCK, *THE CALCULUS OF CONSENT: LOGICAL FOUNDATIONS OF CONSTITUTIONAL DEMOCRACY* (1962).